

KIM J DOCKSTADER (ISB # 4207)
GREGORY C. TOLLEFSON (ISB # 5643)
TERESA A. HILL (ISB # 6175)
STOEL RIVES LLP
101 South Capitol Blvd., Suite 1900
Boise, Idaho 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040
kjdockstader@stoel.com
gctollefson@stoel.com
tahill@stoel.com

Attorneys for Defendant

U.S. COURTS

01 DEC 28 PM 4: 52

RECEIVED
CAMERON S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.
HINKLEY, individually and on behalf of
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

) Case No. CIV 01-0244-S-BLW
)
)
) AFFIDAVIT OF KIM J DOCKSTADER IN
) SUPPORT OF MOTION TO STRIKE
) CONSENTS AND DISMISS POTENTIAL
) OPT-IN CLAIMANTS: Stefanie Bistline,
) Bland Ballard, Michael Moser, Rory Kip
) DeRouen, Jeffrey Parrish, Michael Jordan,
) Michelle Milliken, Isaac Moffett, Christopher
) McCullough, Eric Fillmore, Matthew Flynn,
) Jeffery Clevenger, Tim Hedding, John Seale,
) Mathew Jarame Ell, Chris Wing and Ken Ford
)

STATE OF IDAHO)
) ss.
County of Ada)

I, Kim J Dockstader, being first duly sworn, state:

AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF MOTION TO STRIKE
CONSENTS AND DISMISS POTENTIAL OPT-IN CLAIMANTS – Page 1

BOISR-134088.2 0026493-00046

1. I am counsel for Micron Electronics, Inc., the named defendant in this action, and I have personal knowledge of the matters set forth herein.

2. In or about August 16, 2001 to August 24, 2001, subpoenas duces tecum ("Subpoenas") were served on each of the seventeen persons identified as "potential opt-in claimants in the caption of this Affidavit (the "Claimants"), or otherwise delivered to Plaintiffs' counsel, requesting certain document production from each of the Claimants, as well as from approximately twenty other potential "opt-in" claimants who had filed consents with the Court in this action. Subpoenas and cover letters served on each of the subject Claimants are attached, in alphabetic order, as Exhibit A to this Affidavit. In addition, proofs of service of the Subpoenas on the subject Claimants are attached, in alphabetic order, as Exhibit B to this Affidavit.

3. At the August 31, 2001 Court-ordered telephonic scheduling conference in this action it was set forth by the Court and agreed upon by counsel of record that our firm would coordinate directly with Plaintiffs' counsel on all issues regarding compliance with the Subpoenas. Plaintiffs' counsel also represented that they would accept, on behalf of the subject Claimants and any other potential "opt-in" claimants, future service of any documents, and that all documents responsive to the Subpoenas would be produced by the subject Claimants, but through Plaintiffs' counsel. Thus, defense counsel effectively was not allowed or authorized to contact Claimants or any other potential "opt-in" claimants, nor was Defendant allowed to serve any additional documents directly on such persons. Plaintiffs' counsel sent a letter to this effect on the same day (attached as Exhibit C to this Affidavit), stating also that the "subpoenas to the various opt-ins" would be treated as "requests for production."

4. Several days later, on September 5, 2001, I hand-delivered a letter to Plaintiffs' counsel, Dan Williams and Bill Thomas. Messrs. Williams and Thomas had arrived at my office in the late morning of September 5 for a scheduled meeting on addressing discovery planning (as previously ordered by the Court). This letter is attached as Exhibit D to this Affidavit. In my September 5 letter I clarified that defense counsel had agreed to allow the potential "opt-in" claimants who had been subpoenaed to produce their documents through Plaintiffs' counsel's office. At this time, I personally discussed the letter with Plaintiffs' counsel reiterating our request that all documents should be segregated by person, and that we requested an affidavit for any individuals who purported not to have any responsive documents in their possession.

5. On September 14, 2001, we received Plaintiffs' "First Response to Request for Production of Documents" (attached as Exhibit E to this Affidavit), and the corresponding documents with respect to outstanding subpoenas duces tecum directed to certain other individuals, other than the subject Claimants. Specifically, Plaintiffs' counsel responded to Subpoenas and document requests on behalf of twenty-two persons (the two named Plaintiffs and twenty of the potential "opt-in" claimants). Three of the potential "opt-in" claimants purported, however, to have no responsive documents.

6. On September 25, 2001, Greg Tollefson (another attorney from my office) sent a letter by hand delivery to Plaintiffs' counsel. This letter (attached as Exhibit F to this Affidavit) addressed many of the deficiencies in Plaintiff's recent document production. Particularly, the letter specifically set forth in the second paragraph that there were seventeen subpoenas duces tecum still outstanding and past due for the subject Claimants. We requested to know from

Plaintiffs' counsel how soon we could expect production of documents responsive to the subpocnas. We received no response.

7. Accordingly, on November 8, 2001, Mr. Tollefson and I attended a meeting at Plaintiffs' counsel's office for the purposes of addressing various discovery issues and planning. Both Dan Williams and Bill Thomas were present (although Mr. Thomas did not join us until approximately halfway through the meeting). One of the issues addressed at this meeting was the fact that certain Subpocnas were still outstanding. Specifically, regarding the thirty-seven subpocnas to potential "opt-in" claimants, no response had been received with regard to seventeen of the Subpoenas for the subject Claimants. At this time, I again directed Plaintiffs' counsel to our September 25, 2001 correspondence where the name of each person who had not responded to the Subpoenas was set forth. Mr. Williams stated that it was difficult to contact all of the Claimants. I pointed out that the responses to the Subpoenas were already quite overdue. Mr. Williams indicated that he would look into the issue and get back to us.

8. On November 14, 2001, I sent a letter to Plaintiffs' counsel to follow up on the issues raised at the November 8 meeting between counsel (attached as Exhibit G to this Affidavit). Among other issues addressed, I once again reminded Plaintiffs' counsel that we had not received any response to seventeen of the Subpoenas. Additionally, I pointed out that the overdue discovery made it difficult for us to prepare for discovery efforts, and that it was difficult to determine the persons necessary to be deposed. No response was received.


9. On November 21, 2001, I wrote to Plaintiffs' counsel regarding discovery and deposition issues (attached as Exhibit H to this Affidavit). I again raised the fact that the

seventeen individuals or subject Claimants—Stefanie Bistline, Bland Ballard, Michael Moser, Rory Kip DeRouen, Jeffrey Parrish, Michael Jordan, Michelle Milliken, Isaac Moffett, Christopher McCullough, Eric Fillmore, Matthew Flynn, Jeffery Clevenger, Tim Hedding, John Seale, Mathew Jarame Ell, Chris Wing and Ken Ford—still had not produced any documents or responded at all to the outstanding Subpoenas. Again, no response was received.

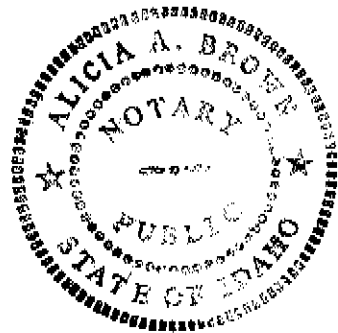
10. Given the lack of response concerning the subpoenas and requests and the approaching interim discovery deadline in February, we had no choice but to proceed with attempting to schedule some depositions. Accordingly, during the month of January, we were able to schedule with Plaintiffs' counsel certain depositions for some of the subject Claimants. However, our ability to prepare for the depositions and further discovery in this case, has been hampered by the fact that the subject Claimants have failed or refused to comply with their Subpoenas. Moreover, had we received compliance with this discovery as originally anticipated, we would have been in a better position to select and schedule desired deponents, as well as prepare for and schedule other potential deponents.

11. I have, in an effort to obtain an answer or response without court action, conferred or attempted to confer in good faith with counsel for the seventeen subject Claimants who have failed or refused to answer or respond to their Subpoenas.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.


Kim J Dockstader

SUBSCRIBED AND SWORN to before me this 28th day of December 2001.



Alicia A. Brown
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires: 6/9/2006

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2001, a true and correct copy of the foregoing AFFIDAVIT OF KIM J DOCKSTADER IN SUPPORT OF MOTION TO STRIKE CONSENTS AND DISMISS POTENTIAL OPT-IN CLAIMANTS was served on the following individuals by the manner indicated:

William H. Thomas	<input type="checkbox"/>	By Hand Delivery
Daniel E. Williams	<input type="checkbox"/>	By Facsimile
HUNTLEY, PARK, THOMAS,	<input checked="" type="checkbox"/>	By U.S. Mail
BURKETT, OLSEN & WILLIAMS	<input type="checkbox"/>	By Overnight Delivery
250 S. Fifth Street		
Suite 660		
Boise, Idaho 83701-2188		



Kim J Dockstader